

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL BISHOP

Claimant

VS.

TERRY LAMB PRO TREE SERVICE

Respondent

AND

WORKERS COMPENSATION FUND

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Docket No. 225,386

ORDER

The Workers Compensation Fund appealed the preliminary hearing Order dated February 17, 1998, entered by Administrative Law Judge John D. Clark.

ISSUES

The Workers Compensation Fund requested the Administrative Law Judge to terminate an order for payment of benefits. The Judge denied that request and the Fund filed this appeal. The Fund requests the Appeals Board to review the issue of whether the employer, Terry Lamb, had sufficient payroll to bring the parties within the provisions of the Workers Compensation Act. That is the only issue before the Appeals Board on this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For preliminary hearing purposes, the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

On the basis that Mr. Lamb did not have sufficient payroll to come within the provisions of the Workers Compensation Act, the Fund requested the Judge to terminate preliminary hearing benefits that had been previously ordered. After reviewing the transcript from the preliminary hearing held in November 1997 and Terry Lamb's deposition testimony, the Judge denied the Fund's request. The Appeals Board finds no reason to disturb the Judge's Order.

The Workers Compensation Act is applicable when the employer either has a \$20,000 gross annual payroll for the calendar year before the accident or when the employer reasonably estimates such a payroll for the year in which the accident occurs. See K.S.A. 44-505(a)(2).

The Administrative Law Judge initially granted Mr. Bishop preliminary hearing benefits for a June 1997 accident after he testified that he regularly worked for Mr. Lamb 30 to 35 hours per week at \$6 per hour and that Mr. Lamb also employed numerous other individuals throughout the year. That Order was appealed to and affirmed by the Appeals Board.

Mr. Lamb testified and identified a number of different individuals he employed in 1996 and 1997. He admits he did not keep accurate payroll records and his testimony indicates his 1996 tax return is inaccurate. When considering the entire record, for preliminary hearing purposes the Appeals Board agrees with the Administrative Law Judge that the Workers Compensation Act is applicable to this accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated February 17, 1998, entered by Administrative Law Judge John D. Clark should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Garry L. Howard, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director